

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

FRANK J. DOMBOS,

Petitioner,

v.

No. CIV 09-0200 JB/GBW

Warden, W.N.M.C.F.,  
ATTORNEY GENERAL  
OF THE STATE OF NEW  
MEXICO,

Respondents.

**ORDER OVERRULING PETITIONER'S OBJECTIONS, ADOPTING  
RECOMMENDATIONS, AND DISMISSING PETITION**

**THIS MATTER** comes before the Court on: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition, filed November 4, 2010 (Doc. 105)("PFRD1"); (ii) the Petitioner's Objections to the Magistrate Judge's Proposed Findings and Recommended Disposition, filed November 16, 2010 (Doc. 110)("Objections to the PFRD1"); (iii) the Magistrate Judge's Report and Recommendation, filed April 5, 2011 (Doc. 142)("PFRD2"); and (iv) the Petitioner's Objections to the Magistrate Judge's Report and Recommendation, filed April 26, 2011 (Doc. 152)("Objections to the PFRD2").

In the PFRD1, the Honorable Gregory B. Wormuth, United States Magistrate Judge recommends denying Petitioner's Request for Setting Hearing, filed October 10, 2010 (Doc. 100), his Affidavit, filed October 18, 2010 (Doc. 101), and his Objections to the PFRD1, see Objections to the PFRD1. In these documents, Petitioner Frank J. Dombos sought to recuse the Judge from the case and for a hearing on that request. The Court has reviewed Dombos' objections to the PFRD1 *de novo*. See Garcia v. City of Albuquerque, 232 F.3d 760, 766-67 (10th Cir. 2000). After

conducting its review, the Court finds that Dombos' objections lack a sufficient basis in the law and in the facts of the case. The Court will overrule Dombos' Objections to the PFRD1 to the extent it has not already overruled those objections. The Court construes Petitioner's Request for Hearing and his Affidavit as a motion to recuse under 28 U.S.C. § 144 and 28 U.S.C. § 455. The Court adopts the PFRD1's analysis and recommendations regarding that Motion and denies it.

PFRD2 was necessary after this Court acted on Dombos' Objections to the PFRD1 concerning an earlier report from Judge Wormuth that recommended that the Court deny all of Dombos' claims on the merits. See Proposed Findings and Recommended Disposition, filed October 25, 2010 (Doc. 104)("Original Report"); Order Sustaining Petitioner's Objections and Denying His Motion for Counsel, filed January 28, 2011 (Doc. 124)("Jan. 28 Order"); Order Sustaining in Part and Overruling in Part Petitioner's Objections, filed February 4, 2011 (Doc. 127)("Feb. 4, 2011 Order"). Specifically, this Court sustained three of Dombos' objections to the proposed findings and recommendations regarding his claims of prosecutorial misconduct. See Feb. 4, 2011 Order at 9-11. Apart from these three objections, the Court overruled Dombos' original objections. See Feb. 4, 2011 Order at 5-8, 11-13. The Court did not sustain the objections on the merits but instead directed the Magistrate Judge to review additional evidence to be provided by Petitioner which was relevant to the prosecutorial misconduct claims. See Feb. 4, 2011 Order at 10-11. PFRD2 contains Judge Wormuth's analysis upon review of the additional evidence. See PFRD2. In PFRD2, Judge Wormuth reaffirms his recommendation that Dombos' claims of prosecutorial misconduct be dismissed on the merits along with the remaining claims in the Petition. See PFRD2 at 30-31; Amended Habeas Corpus Petition, filed March 15, 2010 (Doc. 70). The Court has reviewed Dombos' Objections to the PFRD2 *de novo*. After that review, the Court finds Dombos' objections lack a sound basis in the law and in the facts of the case. The Court will

overrule Dombos' Objections to the PFRD2.

The Court has also reviewed the Petitioner's seven pending motions<sup>1</sup> which repeat matters contained in other objections or seek reconsideration of earlier court orders in this case. Each of these motions lacks a sufficient basis in the law and in the facts of the case or is rendered moot by this order. The Court will then deny each of those motions. The Court will, however, grant the Petitioner's Motion to Continue, filed April 11, 2011 (Doc. 146).

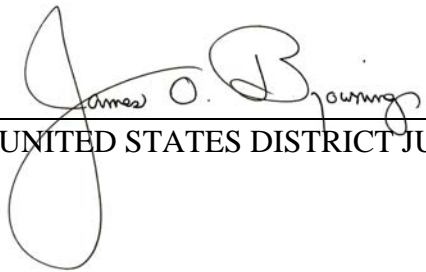
The Court adopts the PFRD2's analysis and recommendations and, except as amended by the PFRD2, the analysis and recommendations of Judge Wormuth's Original Report. See Original Report (Doc. 104); PFRD2 (Doc. 142). The Court notes that, under the recent case of Cullen v. Pinholster, 131 S.Ct. 1388 (2011), the Court may not consider evidence that was not in the record at the time of the state court proceedings as part of this habeas petition, including the evidence Judge Wormuth mentioned was outside the state court record such as the two letters from Wells Fargo and the crime scene photographs excluded from the state court record. See Cullen v. Pinholster, 131 S.Ct. at 1398. The Court notes that, even if it did consider this evidence, its conclusion would be the same. The Court will then dismiss the Petition with prejudice.

**IT IS ORDERED** that: (i) the Petitioner's Objections to the PFRD1, filed November 16, 2010 (Doc. 110), are overruled; (ii) the Magistrate Judge's PFRD1, filed November 4, 2010 (Doc. 105), is adopted; (iii) the Petitioner's Request for Setting Hearing, filed October 10, 2010 (Doc. 100), and his Affidavit, filed October 18, 2010 (Doc. 101), which the Court construes as a motion

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<sup>1</sup>These motions are as follows: Motion for Reconsideration, filed April 14, 2011 (Doc. 147); Motion for Hearing on Petitioner's Motion for Reconsideration, filed April 14, 2011 (Doc. 148); Motion to Correct Order, filed April 20, 2011 (Doc. 149); Motion for Appointment of Counsel, filed April 20, 2011 (Doc. 150); Motion for Evidentiary Hearing, filed April 26, 2011 (Doc. 151); Motion to Order the Production of Evidence, filed April 27, 2011 (Doc. 153); and Motion for Hearing on Petitioner's Motion for Order, filed April 27, 2011 (Doc. 154).

to recuse, are denied; (iv) the Petitioner's Objections to the Magistrate Judge's Report and Recommendation, filed April 26, 2011 (Doc. 152), are overruled; (v) Judge Wormuth's PFRD2, filed April 5, 2011 (Doc. 142), is adopted; (vi) Judge Wormuth's Original Report, filed October 25, 2010 (Doc. 104), is adopted except as amended by the PFRD2; (vii) the Petitioner's Motion to Continue, filed April 11, 2011 (Doc. 146), is granted; and (viii) the Petition, filed March 15, 2010 (Doc. 70), is dismissed with prejudice.



UNITED STATES DISTRICT JUDGE

*Parties and Counsel:*

Frank J. Dombos  
Western New Mexico Correctional Facility  
Grants, New Mexico

*Plaintiff pro se*

Gary K. King  
New Mexico Attorney General  
Margaret E. McLean  
Assistant Attorney General  
New Mexico Attorney General's Office  
Santa Fe, New Mexico

*Attorneys for the Defendants*